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Notice of Allowability	Application No.	Applicant(s)	
	10/033,327	GRAF, ULRICH MARTIN	
	Examiner	Art Unit	
	Allen C. Ho	2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE filed on 23 April 2004.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☒ The drawings filed on 06 October 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>032004, 042004</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-26 are allowed.
2. The following is an examiner's statement of reasons for allowance:

With respect to claims 1, 3-10, 12, and 13, the prior art fails to teach or fairly suggest an apparatus comprising a first therapeutic radiation source attached to a first gantry, a second rotatable gantry attached to the first gantry, and an imager attached to an articulable end of the second gantry as claimed.

With respect to claim 2, the prior art fails to teach or fairly suggest an apparatus comprising at least one second radiation source attached to the first gantry, and an imager attached to an articulable end of a second rotatable gantry as claimed.

With respect to claim 11, the prior art fails to teach or fairly suggest an apparatus comprising a second rotatable gantry that is capable of extending and retracting the second radiation source attached to the second gantry, and an imager attached to an articulable end of the second gantry as claimed.

With respect to claims 14-21, the prior art fails to teach or fairly suggest a method for applying radiation comprising positioning an imager at one of a plurality of distances from the target volume to receive radiation from the diagnostic x-ray source, positioning a therapeutic radiation source to be in alignment with the target volume, and repositioning the imager to receive radiation from the therapeutic radiation source as claimed.

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With respect to claims 22-25, the prior art fails to teach a method for imaging radiation comprising retracting the first radiation source and positioning a second radiation source along the first axis as claimed.

With respect to claim 26, the prior art fails to teach or fairly suggest an apparatus comprising a therapeutic energy source attached to a first gantry, a diagnostic x-ray energy source attached to a retractable end of a second gantry, a multiple-energy imaging unit attached to an opposite articulable end of the second gantry, and the first gantry and the second gantry independently pivotable and attached at a common axis as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

3. Applicant's arguments filed 23 April 2004 with respect to the drawings have been fully considered and are persuasive. The objection of the drawings has been withdrawn.

4. Applicant's arguments filed 23 April 2004 with respect to objections of claims 4 and 5 have been fully considered and are persuasive. The objections of claims 4 and 5 have been withdrawn.

5. Applicant's arguments filed 23 April 2004 with respect to rejections of claims 1-27 under 35 U.S.C § 112 have been fully considered and are persuasive. The rejections of claims 1-27 under 35 U.S.C § 112 have been withdrawn.

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6. Applicant's arguments filed 23 April 2004 with respect to rejections of claims 1, 3-10, 12, and 13 under 35 U.S.C § 103(a) have been fully considered and are persuasive. The rejections of claims 1, 3-10, 12, and 13 under 35 U.S.C § 103(a) have been withdrawn.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen C. Ho whose telephone number is (571) 272-2491. The examiner can normally be reached on Monday - Friday from 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward J. Glick can be reached at (571) 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Allen C. Ho
Patent Examiner
Art Unit 2882

ACH


EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER